

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 97-1380-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID B. MATTSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Monroe County: MICHAEL J. McALPINE, Judge.¹ *Affirmed.*

¹ The judgment of conviction indicates that Judge Steven Abbott found Mattson guilty and convicted him of the instant offense. Mattson's notice of appeal also identifies Judge Abbott as having entered the judgment, although the caption of his brief recites that it was Judge McAlpine. The State's brief has Judge McAlpine's name printed in the caption, but it is lined through and Judge Abbott's name is penned in. The transcript of Mattson's plea and sentencing on September 23, 1996 indicates that Judge McAlpine presided. The transcript of the hearing on Mattson's motion to suppress evidence similarly shows Judge McAlpine to have presided and denied the suppression motion. We have chosen to accept the identification of the presiding judge reflected in the transcripts.

DEININGER, J.² David Mattson appeals a judgment convicting him of possession of a controlled substance (THC), in violation of § 161.41(3r), STATS., 1993-94.³ He claims the trial court erred in denying his motion to suppress evidence obtained when the police, without a warrant, entered a residence at which he was an overnight guest. We have already considered the arguments Mattson raises on the identical facts in *State v. Darian L. Hall*, No. 97-1381-CR, unpublished slip op. (Wis. Ct. App. October 30, 1997). We affirmed Hall's conviction and the denial of the suppression motion because we concluded that there were "sufficient facts for the officers to conclude that a crime had been committed and someone was in the process of covering up the evidence of it." *Id.* at 9. We therefore held that both probable cause and exigent circumstances were present, and that the officers had lawfully entered the residence.

Both Hall and Mattson were in the residence when the police entered, and each was charged with possession of THC based on evidence located in the residence or on their persons. Hall and Mattson were represented by the same counsel at the hearing on their motions to suppress evidence. The trial court's denial of their motions was based on precisely the same factual record regarding the actions of the police leading up to their entry of the residence. The record in this appeal, moreover, indicates that the State filed identical response briefs here and in *Hall*. Apparently, however, neither party moved for consolidation of the appeals, and Mattson's appeal was submitted on November 6, 1997, after *Hall* had been decided.

² This appeal is decided by one judge pursuant to § 752.31(2)(f), STATS.

³ This section has been amended and recreated as § 961.41(3g)(e), STATS., 1995-96.

Since there is no factual or legal basis for us to distinguish Mattson's claims from those of his co-defendant, we affirm the denial of his suppression motion and his conviction for the reasons set forth in *State v. Darian L. Hall*, No. 97-1381-CR, unpublished slip op. (Wis. Ct. App. October 30, 1997).

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

